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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**  
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16 **IN RE GOOGLE PLAY ANTITRUST**  
17 **LITIGATION**

18 THIS DOCUMENT RELATES TO:

19 *Epic Games Inc. v. Google LLC et al.*,  
20 Case, No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**[PROPOSED] ORDER GRANTING  
GOOGLE’S MOTION FOR JUDGMENT AS A  
MATTER OF LAW UNDER RULE 50(B) OR  
FOR A NEW TRIAL UNDER RULE 59**

Judge: Hon. James Donato  
Courtroom: 11, 19th Floor

1 Before the Court is Defendants' Motion for Judgment as a Matter of Law or for a New  
2 Trial.

3 Having considered all papers submitted in connection with the Motion, supporting  
4 documents, the arguments of counsel, the pleadings on file in this action, and all testimony and  
5 evidence admitted at trial, and good cause appearing therefore, the Court finds:

6 *First*, that issue preclusion barred Epic from contesting that Apple and Google compete in  
7 the relevant markets;

8 *Second*, Epic's relevant markets limited to Android devices were flawed as a matter of law  
9 and Epic failed to present a legally sufficient basis for any reasonable jury to find that Epic proved  
10 any relevant market found by the jury;

11 *Third*, the jury was improperly instructed on Step 1 of the Rule of Reason analysis because  
12 it was not instructed that it had to consider whether each category of challenged conduct had  
13 substantial anticompetitive effects;

14 *Fourth*, the jury was improperly instructed on Step 2 of the Rule of Reason analysis  
15 because it was not instructed to consider procompetitive benefits in related product markets  
16 beyond the relevant product markets;

17 *Fifth*, the jury was improperly invited to balance competitive effects as part of the Rule of  
18 Reason analysis;

19 *Sixth*, Epic did not present a legally sufficient basis for any reasonable jury to find that  
20 Epic satisfied its burden to establish:

- 21 1. product markets limited to Android devices;
- 22 2. a product market for in-app payments or a nearly global geographic market;
- 23 3. that Google's conduct was anticompetitive as a matter of law;
- 24 4. its tying claim;
- 25 5. substantially less restrictive alternatives for the challenged conduct;

26 *Seventh*, Google is entitled to a new trial based on erroneous evidentiary rulings:

- 27 1. relating to Google employees' use of attorney-client privilege;
- 28 2. precluding Google from referencing the outcome of *Epic v. Apple*;

1           3.       relating to the adverse inference instruction.

2           [Accordingly, Defendants' Motion is GRANTED and it is hereby ORDERED that  
3 judgment as a matter of law is entered in Defendants' favor.] [OR: Defendants' Motion for a new  
4 trial under Rule 59 is GRANTED and it is hereby ORDERED that Defendants are entitled to a  
5 new trial on all issues. The new trial will be tried as a bench trial. [The Court deems the jury  
6 verdict advisory and will issue written findings based on the record introduced at trial.]]

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8           **IT IS SO ORDERED**

9       DATED:

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10       HON. JAMES DONATO  
11       United States District Judge  
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